

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

HI-LAND PROPERTIES, LLC,
Appellant,

v.

TILLA GANTT,
Appellee.

No. 4D2025-1354

[February 18, 2026]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; William W. Haury, Jr., Judge; L.T. Case No. CACE-22-008808.

Shawn Gordon Rader and Michael Piccolo of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., Orlando, for appellant.

Edward Michael Shahady of The Shahady Law Firm, PLLC, Fort Lauderdale, for appellee.

GROSS, J.

Hi-Land Properties, LLC (“Hi-Land”) appeals a final judgment in its partition action, challenging that portion of a summary judgment order determining that it was a 50% owner of a parcel of real property, and not a 75% owner. As we explain in detail below, we reverse the final judgment and remand for the entry of a judgment confirming Hi-Land’s 75% ownership of the real property at issue.

Background Facts

The property at issue (the “Property”) was conveyed in a series of deeds eventually resulting in a 1996 quit claim deed (“1996 Deed”) that purported to convey the Property. Henrietta Osborne and appellee Tilla Gantt owned the property as joint tenants with rights of survivorship under a 1990 deed. In the 1996 Deed, they conveyed the property to four grantees: (1) Appellee Gantt; (2) Mary Robbins; (3) Quinnie Osborne; and (4) Emma Williams. Henrietta Osborne was Gantt’s mother, and the 1996 Deed conveyed the Property to Gantt and her three siblings.

The 1996 Deed lacked two subscribing witnesses as required by section 689.01, Florida Statutes (1996).

After the deaths of Mary Robbins and Quinnie Osborne, Hi-Land eventually became the successor in interest to each of their 25% interests in the Property. Those transfers to Hi-Land are undisputed, and Gantt conceded below that Hi-Land owned 50% of the Property. The parties stipulated that Gantt held at least a 25% interest in the Property.

The dispute before us concerns the ownership of the 25% interest conveyed to Emma Williams by the 1996 Deed. Hi-Land attempted to prove that it owned Emma Williams's 25% interest through a chain of title dating back to 1961, including the 1996 Deed and instruments that were recorded after the 1996 Deed.

Emma Williams died in 2006. The personal representative of Emma Williams's estate, Larry E. Williams, executed two documents entitled Personal Representative's Release and Certificate of Distribution of Real Property ("PR Release"). Both PR Releases included the Property's legal description, were recorded in the public records, and contained the statutory formalities of section 689.01, as the PR Releases (1) were written instruments, (2) had two subscribing witnesses, and (3) were signed by the Personal Representative.

The first PR Release acknowledged that title to an undivided 1/8 interest in the Property was owned by the decedent at the time of death, and that the title vested in Larry E. Williams "by operation of law as of the date of the decedent's death pursuant to Florida law as will more fully appear from the proceedings in the Circuit Court . . . Probate Division, in File No. 05-3901, subject to the rights of the Personal Representative" under the Florida Probate Code "to take possession or control of the Property, or to use, sell, encumber or otherwise exercise control over the Property" (1) for the payment of estate obligations, (2) to enforce contribution and equalize advancement, or (3) for distribution. Having determined that "the Property is not needed for any of the foregoing purposes, except distribution," the Personal Representative stated in the PR Release that he "hereby releases the Property from all rights and powers of the Personal Representative" and "acknowledges that the Property is vested in, free of all rights of the Personal Representative."

The second PR Release was substantively identical to the first except that it referred to a 1/8 interest in the Property being vested in Anita D. Middleton.

Subsequently, in 2021, Larry Williams and Anita Middleton executed warranty deeds conveying their respective 12.5% interests in the Property to Hi-Land.

The Lawsuit

In 2022, Hi-Land sued Gantt for partition, seeking a judgment partitioning the Property, among other things. Hi-Land alleged that it owned 75% of the Property and Gantt owned 25%.

Gantt answered the complaint and admitted several material allegations, but denied the allegation that Hi-Land owned 75% of the Property. Gantt did not assert any affirmative defenses.

The Bench Trials and Hi-Land's Motion for Summary Judgment

The first bench trial culminated in a dismissal of the case without prejudice—due to Hi-Land's failure to introduce certified copies of the recorded instruments—but the trial court later vacated the dismissal. The second bench trial did not result in a final adjudication of the disputed 25% ownership in the property.

At the second bench trial, Hi-Land introduced multiple exhibits into evidence without objection, including the 1996 Deed, the PR Releases, and the warranty deeds from Larry Williams and Anita Middleton to Hi-Land. Gantt raised two arguments challenging the sufficiency of Hi-Land's evidence: (1) the 1996 Deed did not have any subscribing witnesses and was thus ineffective; and (2) Hi-Land's evidence did not establish the validity of a transfer of Emma Williams's 25% interest because Hi-Land had not produced a court order confirming the sale of the property, which Gantt argued was required by section 733.613(1), Florida Statutes, nor had Hi-Land produced a court order establishing the identity of the heirs or beneficiaries. Elaborating on her second argument, Gantt asserted that the PR Releases did not convey or vest title, and that the Personal Representative's statements therein constituted hearsay and an improper legal opinion by a person not qualified as an expert.

Before the second trial adjourned, the trial judge told Hi-Land's counsel, "I guess the only issue is whether or not you're going to find . . . an order authorizing your sale out of the estate of Emma Lou Williams."

Post-Trial Proceedings

Following the trial, Hi-Land did not produce the probate order referenced by the trial court.

Instead, Hi-Land moved for summary judgment, arguing in relevant part that it owned 75% of the Property, including Emma Williams's 25% interest. Hi-Land's argument for ownership of the disputed 25% interest relied upon the recorded chain of title, including the 1996 Deed, the PR Releases, and the warranty deeds from Larry Williams and Anita Middleton to Hi-Land, which were all attached as exhibits to its operative motion.

Gantt responded in opposition to Hi-Land's motion for summary judgment and renewed her motion for involuntary dismissal as to Hi-Land's claim to the 25% interest of Emma Williams. On the merits, Gantt argued that Hi-Land, despite its implicit promise to do so, had failed to produce a court order authorizing the sale of the Property in the Emma Williams probate action, and thus had failed to present any cognizable evidence to establish a chain of title from Emma Williams to Hi-Land.

Order on Hi-Land's Motion for Summary Judgment

The trial court granted in part and denied in part Hi-Land's motion for summary judgment.

Although the court granted partition, the court denied Hi-Land's "demand that the court determine that it is a 75% owner" of the Property. The court ruled that because Hi-Land had "failed to prove the validity of the transfer from the estate of Emma Williams to Larry E. Williams and Anita D. Middleton, [Gantt] is deemed to be a 50% owner and [Hi-Land] is deemed to be a 50% owner." The trial court thus implicitly accepted Gantt's arguments that "the transfers to Larry E. Williams and Anita D. Middleton were never ratified by court order" and that Hi-Land thus "did not have standing to use the curative statute because [Hi-Land] had failed to prove the conveyances to Larry E. Williams and Anita D. Middleton during the probate were valid." The court also implicitly agreed with defense counsel's argument that Emma Williams's 25% interest "should revert to Tilla Gantt because the curative statute was ineffective as to that portion because [Hi-Land] lacked standing to raise it."

Final Judgment and Motion for Rehearing

The trial court later entered a final judgment determining that Hi-Land and Gantt each own an undivided one-half interest in the Property as

tenants in common. The court ordered that the Property “shall be sold by private sale,” with the proceeds held in escrow pending the entry of an order as to attorney’s fees, costs, and reimbursements.

Hi-Land moved for rehearing, arguing that no court order was required to approve a conveyance or transfer from Emma Williams’s estate because Emma Williams’s devisees took title the moment Emma Williams died. Hi-Land maintained that the PR Releases “did not constitute a transfer or conveyance,” but were “merely a formalization of the fact of the devise.”

Importantly, Hi-Land argued that section 733.613(1) did not apply because “title to Emma Williams’ portion had already passed, so there was no ‘sale’ for the probate court to authorize.” Hi-Land contended that the PR Releases “did NOT constitute sales or transfers” and that defense counsel was “wrong” when he argued “that an order of the probate court was necessary regarding the ‘conveyance’ of the devised property to Larry Williams and Anita Middleton,” as “title passed immediately upon Emma Williams’ death.”

The trial court denied the motion for rehearing.

***The Instruments Presented at the Second Bench Trial and
Attached to Hi-Land’s Motion for Summary Judgment
Were Sufficient to Establish that Hi-Land Owned a
75% Interest in the Property, Including
Emma Williams’s 25% Interest in the Property***

A. The Cure Statute

Section 95.231(1), Florida Statutes (2024), provides in pertinent part:

Five years after the recording of an instrument required to be executed in accordance with s. 689.01; . . . the instrument, . . . shall be held to have its purported effect to convey, affect, or devise, the title to the real property of the person signing the instrument, as if there had been no lack of seal or seals, witness or witnesses, defect in, failure of, or absence of acknowledgment or relinquishment of dower, in the absence of fraud, adverse possession, or pending litigation. The instrument is admissible in evidence.

§ 95.231(1), Fla. Stat. (2024).¹

Section 95.231(1)'s curative provisions are automatic and self-executing. *Saccullo v. United States of Am.*, 913 F.3d 1010, 1015–16 (11th Cir. 2019) (collecting Florida cases). “[A]fter five years, the statute not only shields a once-defective deed from judicial attack, but also—of its own force—affirmatively mends it back to health.” *Id.* at 1016. An adjudication is unnecessary “to enforce § 95.231(1)'s curative provision,” as a defective deed is considered “to have its purported effect” by operation of law five years after it was initially recorded. *Id.*

Here, section 95.231(1) automatically cured the 1996 Deed's lack of subscribing witnesses after five years. Gantt never raised or established any of the statutory exceptions for fraud, adverse possession, or pending litigation. Thus, the 1996 Deed is considered to have its purported effect by operation of law five years after it was initially recorded.

B. The PR Releases

Florida law recognizes “a strong presumption in favor of the correctness of deeds and other instruments as written and executed.” *Barr v. Schlarb*, 314 So. 2d 609, 610 (Fla. 1st DCA 1975) (cleaned up). “No proposition could be more logical than that an instrument is what it says it is and appears to be.” *Id.*

Exceptions to the rule against hearsay apply to the contents of certain documents relating to property.

Section 90.803(14), Florida Statutes (2024), provides a hearsay exception for the record of a documents “purporting to establish or affect an interest in property,” allowing the record to serve “as proof of the contents of the original recorded or filed document and its execution and delivery” Furthermore, section 90.803(15), Florida Statutes (2024), allows the admission of a statement contained within a document “purporting to establish or affect an interest in property” if the statement is “relevant to the purpose of the document,” unless subsequent dealings with the property “have been inconsistent with the truth of the statement or the purport of the document.” Here, the subsequent dealings with the property—namely, the warranty deeds from Larry Williams and Anita Middleton to Hi-Land—were consistent with the truth of the statements in the PR Releases.

¹ Section 95.231(1)'s 1996 version has the same substantive effect as the 2024 version.

A detour into probate law is necessary to understand why the PR Releases were sufficient to prove the transfer of Emma Williams's 25% interest to Larry Williams and Anita Middleton.

Generally, a decedent's interest in non-homestead real property vests in a devisee or heir by operation of law immediately upon the decedent's death, subject to the administration of the estate. *See* § 732.514, Fla. Stat. (2005) ("The death of the testator is the event that vests the right to devise unless the testator in the will has provided that some other event must happen before a devise vests."); § 732.101(2), Fla. Stat. (2005) ("The decedent's death is the event that vests the heirs' right to the decedent's intestate property."); *Jones v. Fed. Farm Mortg. Corp.*, 182 So. 226, 227 (Fla. 1938) ("Except as to the homestead, the title to real estate, at the death of the owner intestate, vests in his heirs at law; and, upon his death testate, the title vests in the devisees."); *In re Est. of Slater*, 437 So. 2d 1110, 1112 (Fla. 5th DCA 1983) ("The title to real property owned by an intestate decedent descends at death directly to the heirs subject to the administration of the estate.").

"All real and personal property of the decedent, except the protected homestead, . . . shall be assets in the hands of the personal representative" for three purposes: (a) paying estate obligations; (b) enforcing contribution and equalizing advancement; and (c) distribution. § 733.608(1), Fla. Stat. (2005). However, a personal representative generally does not need a court order to "[m]ake partial distribution to the beneficiaries of any part of the estate not necessary to satisfy claims, expenses of administration, taxes, family allowance, exempt property, and an elective share, in accordance with the decedent's will or as authorized by operation of law." § 733.612(26), Fla. Stat. (2005).

As one treatise has explained, a personal representative's recorded release and certificate of distribution is an instrument that formally evinces the transfer of real property from the decedent to the heir or devisee:

Because title is vested in the heir or devisee from the date of death of the decedent, it is unnecessary for the personal representative to execute a deed conveying the property at the time of distribution. *Instead, the transfer of real property to an heir or devisee is evinced by a personal representative's release and certificate of distribution, filed in the public records of the county where the property is located, and specifically identifying the subject property. From a record-title*

standpoint, *this certificate suffices to formally acknowledge the transfer of property from the decedent to the heir or devisee.*

Jeffrey S. Goethe, *Practice Under Florida Probate Code* § 14.3 (12th ed. 2025) (emphasis added). Moreover, a “personal representative never holds title to estate real property (unless purchased during administration) and the estate is not an entity holding title.” *Id.* (citation omitted).

Here, the PR Releases were competent, substantial evidence to prove the transfer of Emma Williams’s 25% interest in the Property to Larry Williams and Anita Middleton. A presumption of correctness applied to the PR Releases as written and executed. Absent any evidence to the contrary, the law presumes that each PR Release is exactly “what it says it is and appears to be.” *Barr*, 314 So. 2d at 610. The PR Releases were recorded instruments purporting to affect an interest in real property and were admissible as proof of their contents and execution. The statements contained within the PR Releases were admissible as proof that Emma Williams’s title to a 25% share of the Property had vested by operation of law to Larry Williams and Anita Middleton, and that Larry Williams, as the Personal Representative, had released and distributed the Property to those beneficiaries free of all rights of the Personal Representative.

We reject Gantt’s arguments that attempt to undermine the probative force of the PR Releases.

Gantt argues that Larry Williams’s assertion in the PR Release that he was the Personal Representative was insufficient proof of this fact. Gantt relies on the proposition that “[a]gency may not be proved by a declaration of the putative agent in the absence of the principal.” *Standley v. White*, 326 So. 2d 68, 69 (Fla. 1st DCA 1976). But the analogy to agency law is unconvincing. *Standley* does not apply here because a personal representative is not an agent of the decedent or of the estate in the common-law principal-agent sense. *Standley*’s proposition—that an agent’s authority cannot be proven solely by their own declaration—is inapplicable here because the Personal Representative derived his authority from a court appointment, not a self-declaration. Moreover, the PR Release incorporated the probate case by reference, and the PR Release itself is a recorded instrument affecting an interest in property, which is admissible as substantive evidence of the execution and delivery of the instrument, as well as the truth of its recitals.

Similarly, Gantt’s evidentiary objections below regarding hearsay and “improper legal opinion” were unpersuasive and foreclosed by the Florida Evidence Code. Because a PR Release’s purpose is to release and

distribute the real property to the rightful beneficiaries free of the personal representative's administrative powers, the PR Release's recital that the property "vested in [the beneficiary] by operation of law" is admissible as substantive evidence of that fact over a hearsay objection. Gantt's claim that the PR Releases contained an improper expert legal opinion fails because the recital that title vested "by operation of law" is not expert testimony or improper legal opinion. Rather, the recital is a factual assertion in a probate instrument, serving to memorialize the fact of the automatic vesting of title in the devisee, consistent with the Florida Probate Code, and to explain the circumstances of the distribution.

We also reject Gantt's argument that section 733.613(1), Florida Statutes (2005), required the transfers by the personal representative to Larry Williams and Anita Middleton to be ratified by court order. Gantt's reliance upon section 733.613(1) conflated a personal representative's sale of real property with a release or distribution, which are legally distinct events.

Section 733.613 governs a personal representative's sale of real property and provides in relevant part:

733.613. Personal representative's right to sell real property

(1) When a personal representative of an intestate estate, or whose testator has not conferred a power of sale or whose testator has granted a power of sale but the power is so limited by the will or by operation of law that it cannot be conveniently exercised, shall consider that it is for the best interest of the estate and of those interested in it that real property be sold, the personal representative may sell it at public or private sale. No title shall pass until the court authorizes or confirms the sale. No bona fide purchaser shall be required to examine any proceedings before the order of sale.

(2) When a decedent's will confers specific power to sell or mortgage real property or a general power to sell any asset of the estate, the personal representative may sell, mortgage, or lease, without authorization or confirmation of court, any real property of the estate or any interest therein for cash or credit, or for part cash and part credit, and with or without security for unpaid balances. The sale, mortgage, or lease need not be justified by a showing of necessity, and the sale pursuant to power of sale shall be valid.

§ 733.613(1), (2), Fla. Stat. (2005).

Here, section 733.613(1) is inapplicable because the PR Release did not involve a “sale” of Emma Williams’s interest in the Property. Section 733.613(1)’s statutory language that “[n]o title shall pass until the court authorizes or confirms the sale” does not apply because the Personal Representative did not sell the Property at public or private sale. In fact, the PR Release did not cause title to “pass” at all. Rather, the PR Release merely released the Property from the Personal Representative’s administrative powers and acknowledged that title had already vested by operation of law at Emma Williams’s death, so no “sale” had occurred for the court to authorize or confirm.

Gantt cited no authority that would have required the probate court to ratify the operation-of-law transfers to Larry Williams and Anita Middleton or to ratify the PR Releases. Contrary to Gantt’s argument below, no court order was required to ratify the PR Releases because a personal representative may generally, without court order, distribute to the beneficiaries any part of the estate not necessary to satisfy estate obligations. § 733.612(26), Fla. Stat. (2005).

Once Hi-Land introduced the recorded PR Releases evincing the transfer and distribution of Emma Williams’s 25% interest to the devisees, along with the chain of title to Emma Williams and the undisputed deeds from Emma Williams’s devisees to Hi-Land, Hi-Land established a facially valid chain of title. Hi-Land thus satisfied its burden to establish a prima facie case of its ownership of Emma Williams’s 25% through the chain of title. This shifted the burden to Gantt to rebut the accuracy of the information contained in the PR Releases by presenting extrinsic evidence to show that either Larry Williams was not truly the Personal Representative or Emma Williams’s 25% interest had not vested in Larry Williams and Anita Middleton at the moment of Emma Williams’s death. Gantt never presented any such evidence at the bench trials or in opposition to summary judgment.

Conclusion

Based on the foregoing, we reverse the final judgment and remand to the circuit court to enter a final partition judgment ruling that Hi-Land owns a 75% interest in the Property and Gantt owns 25%.

Reversed and remanded.

KUNTZ, C.J., and GERBER, J., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.